IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/01/2003

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The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice F.M. IBRAHIM KALIFULLA

W.P. No.6735 of 2000 and W.P.No. 6736 OF 2000

S. Abdullakhan ..... Petitioner

-Vs-

1. The Tribunal for Disciplinary
Proceedings, Tiruchy Road
Marketing Committee Complex
Coimbatore

2. The Government of Tamil Nadu
rep. by its Secretary to Govt.
Local Administration Department
Chennai-9

3. The Director of Town Panchayat
Chennai

4. The Registrar
Tamil Nadu Administrative Tribunal
Chennai .... Respondents

Petitions under Art.226 of the Constitution of India
praying for a Writ of Certiorari as stated in the petitions

For Petitioner :: Mr. V. Raghavachari

For Respondents :: Mr. S.T.S. Murthy, G.A.

:ORDER

(Order of the Court was made by V.S. SIRPURKAR, J.)

Both these writ petitions have been filed by one Abdullakhan,
who was working with the Vegambur Town Panchayat, Erode District. In the
first-mentioned writ petition, the prayer is for setting aside the order

passed in the original application (O.A. No.1841 of 1989) filed by the petitioner before the Tamilnadu Administrative Tribunal. By that original application, the petitioner had challenged the departmental enquiry proceedings initiated against him. In the second writ petition also, the petitioner seeks the setting aside of the order of the Tribunal whereby, the Tribunal had confirmed the earlier orders in the departmental enquiry No.140/88 Ref.No.2568/88/A3, dated 3-4-19 89, and G.O. Ms. No.479. The following facts will highlight the controversy.

2. The petitioner, at the relevant time, was working as Executive Officer (Selection Grade) and was posted at Vengambur Town Panchayat. He had joined the services in his capacity as Junior Assistant in Krishnagiri Town Panchayat and after about 40 years of service, he rose to that position. He was served with the disciplinary proceedings, which were to be tried by the Tribunal for Disciplinary Proceedings, Coimbatore. There were few charges proposed which were in the nature of corruption charges in the sense that he is said to have acquired assets disproportionate to the known sources of his income. The second charge pertained to the construction of a house without prior permission. It is pointed out in the original application that he had already attained the age of retirement on superannuation on 31-8-1985. However, he was suspended by an order dated 29-8-1985 and was not allowed to retire from the service and thereby he was deprived of the terminal benefits which he would have otherwise had. It seems that the petitioner filed two original applications before the Tamilnadu Administrative Tribunal. In one application, he challenged the suspension order and in the other, he challenged the very validity of the proceedings on the ground that the Tribunal for Disciplinary Proceedings did not have the jurisdiction to conduct the departmental enquiry as he himself could not be said to be a Government Servant.

3. Both these original applications came to be dismissed by the Tribunal. The Tribunal took the view that the suspension was called for inasmuch as there was material against the petitioner and in the wake of the availability of that material, the suspension had to be the only course to be adopted by the Government. It seems that very feebly it was tried to be argued before the Tribunal that there was no material worth the name for initiating the departmental enquiry. The Tribunal has dealt with that aspect also and has recorded a finding that there was material available for trying the petitioner departmentally through the Tribunal for Disciplinary Proceedings.

4. These orders of the Tribunal are challenged in these two writ petitions.

5. Mr. Raghavachari, learned counsel for the petitioner as a first and probably the only point raised a plea that the Tribunal for Disciplinary Proceedings had no jurisdiction to try the case of the persons like the petitioner because the petitioner could not be said to be a Government Servant. In that, learned counsel very heavily relies on the definition of Government Seant which is given in Rule 2(e) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 (in short the

Rules) whic says: Government Servants include servants of the Municipal Corporations also.

Learned counsel invites our attention also to Rule 4 and points out that the Executive authority of a local authority could refer the cases of the servants of the local authority to the Tribunal only with the sanction of the Government and that too if it was found that there were charges of corruption against them jointly with the Government servants whose cases were referred to the Tribunal already. Learned counsel points out that in this case, there was no question of there being any joint charges of corruption with any Government Servant and, therefore, the reference to the Tribunal by the Executive authority would be of no consequence and under such circumstances, the said Tribunal would have no jurisdiction.

6. Learned Government Advocate supports the order of the Tribunal and suggests that there is ample jurisdiction in the Tribunal to try the cases pertaining to the persons like the petitioner. He also suggests that there was enough material against the petitioner and lastly he submits that there would be no question now to interfere with the suspension because, the enquiry itself has come to an end and the result of the enquiry would be declared soon which would decide one way or the other the fate of the suspension.

7. After considering the rival submission, it is seen that the learned counsel for the petitioner is not correct in his submission in so far as it pertains to the jurisdiction of the Tribunal. Rule 1(c) of the Rules is as under:

1(a) These rules may be called the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955.
(b) ... ...
(c) They shall apply to-
(i) all officers under the rule making control of the State Government other than those referred to in Art.314 of the Constitution of India; and
(ii) all officers of the Corporation of Madras, Madurai and Coimbatore.

It is, therefore, apparent that all those officers who are under the rule making control of the State Government would be governed by the Rules and as such their cases could be triable by the Disciplinary Proceedings Tribunal. It is not as if the Tribunal has the jurisdiction to try the matters pertaining to the Government Servant alone. The sweep of the rules is broader than that. We are not impressed by the argument that the definition Government Servant does not include the persons like the petitioner who were at the relevant time working with the Town Panchayats. The definition of Government Servant in Rule 2(e) is only an inclusive definition. Therefore, it will have to be read only in that fashion. Merely because there is a special mention of the servants of the Municipal Corporations, it would not mean that the servants of the Town Panchayats have necessarily been excluded from the category of Government Servant.

8. Same thing applies to the argument on the basis of Rule 4. The thrust of Rule 4 can be well realised when we see the language of the rule

itself. The said rule runs as under:
"(4) The Executive authority of a local authority may, with the sanction of the Government and shall, if so required by the Government, refer to the Tribunal cases of servants of the local authority when they are involved in charges of corruption jointly with Government servants whose cases are referred to the Tribunal under this rule. The cases so referred shall be enquired into by the Tribunal in accordance with the rules relating to appointment and punishment of officers and servants of the local authority."
The thrust of the rule is on the power of the Executive authority to refer the cases and not on suggesting as to whom would the rules apply. The applicability of the rules would have to be read in Rule 1(c) only, which we have quoted above. Rule 4, therefore, will not help the petitioner at all. In fact, the language of Rule 1(a)(c)(i) is wide enough to cover the case of the petitioner as, admittedly, he is one of the officers who is under the rule making control of the State Government.

9. As if this is not sufficient, learned Government Advocate has come out with a notification vide G.O. No.2155, dated 16-10-1984. The appendix to this Government Order reflects a notification whereby the Government has framed the rules for the servants of the Town Panchayats. In category 1 (a) Executive Officers of Town Panchayats (Selection Grade) are clearly mentioned. Therefore, it is clear that the petitioner was in a service which was controllable by the State Government under its rule making power. If that is so, it has to be held that the Tribunal for Disciplinary Proceedings had the necessary jurisdiction to try the disciplinary proceedings against the petitioner. The contention of the learned counsel for the petitioner that it had no jurisdiction is, therefore, rejected.

10. Learned counsel then urged that there was really no material to frame the charges against the petitioner. Learned counsel tried to take us through the charge memo. However, we refuse to go into that question because it will be for the Tribunal to try and decide as to whether there is any material available against the petitioner. We desist from expressing any opinion regarding the same.

11. Lastly, learned counsel pointed out that though the suspension was effected about 13/14 years back, the enquiry has not still been over. We only express that it is the petitioner alone who is to be blamed for that. The matter seems to have been prolonged because of the pendency of the first writ petition filed by the petitioner and thereafter when the matter was pending before the Tamilnadu Administrative Tribunal. However, considering the delay and under the present circumstances, we would choose to direct the Government to complete the enquiry within three months from the date this order reaches the Tribunal. The time limit fixed by us shall be strictly adhered to. The petitioner shall be at liberty to urge all the points including that of the absence of material before the Tribunal also. In the event the enquiry is not completed within the time limit, the petitioner shall be at liberty to approach the Tamilnadu Administrative Tribunal for further directions.

12. With the above directions, the writ petitions are

disposed of. W.M.P. Nos.10066 to 10070 of 2000 are closed. No costs.

Index:Yes
Website:Yes

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To:

1. The Registrar
The Tribunal for Disciplinary
Proceedings, Tiruchy Road
Marketing Committee Complex
Coimbatore

2. The Secretary
Local Administration Department
Government of Tamil Nadu
Chennai-9

3. The Director of Town Panchayat
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4. The Registrar
Tamil Nadu Administrative Tribunal
Chennai